

ORIGINAL

48

FILED US Bankruptcy Court
JUN 3 2020 4:41:12

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION

In re:

ALLEN BEAL,
Debtor.

STATE BANK OF SOUTHERN
UTAH, a Utah banking
corporation,

Plaintiff

VS.

ALLEN BEAL,
Defendant/Debtor.

) Evidentiary Hearing
) on Motion to Extend
) Time for Filing
) Adversary Proceeding,
) and Motion to Strike

) Case No. 19-20276
)
) Volume 2

October 24, 2019 * 1:01 p.m.

OFFICIAL TRANSCRIPT OF ELECTRONIC RECORDING

Reporter: Dawn M. Perry, CSR

172

236 SOUTH 300 EAST
SALT LAKE CITY, UT 84111

WWW.CITICOURT.COM

CITICOURT
THE REPORTING GROUP

801-532-3441
FAX: 801-532-3414

INFO@CITICOURT.COM

A P P E A R A N C E S

FOR THE DEFENDANT/DEBTOR:

Will Morrison
Attorney at Law
Morrison Law Office
5957 S. Redwood Road
Suite 101
Salt Lake City, Utah 84123
(801) 519-9772
willmorrison01@gmail.com

FOR THE PLAINTIFF:

Steven W. Call
Attorney at Law
Ray, Quinney & Nebeker
36 S. State Street
Suite 1400
Salt Lake City, Utah 84111
(801) 532-1500
(801) 532-7543 (fax)
scall@rqn.com

I N D E X

PAGE

JANENE TANNER

Direct Examination by Mr. Call 107

Cross-Examination by Mr. Morrison 133

Redirect Examination by Mr. Call 143

RUSSELL JONES

Direct Examination by Mr. Call 146

Cross-Examination by Mr. Morrison 158

Redirect Examination by Mr. Call 160

GARY GFELLER

Direct Examination by Mr. Call 161

Cross-Examination by Mr. Morrison 184

Redirect Examination by Mr. Call 213

* * *

E X H I B I T S

NO.	DESCRIPTION	PAGE
16	Daily Log	186
17	Demand	186
18	Timeline	186

* * *

P R O C E E D I N G S

THE CLERK: Please be seated.

In the matters of State Bank of Southern
Utah versus Beal and Allen Beal.

THE COURT: Why don't we get appearances
of counsel again today, okay?

MR. CALL: Steve Call appearing on behalf
of State Bank of Southern Utah.

MR. MORRISON: Will Morrison for Mr. Beal.

THE COURT: All right. Mr. Call, do you
wish to call another witness?

MR. CALL: I do. I -- I would ask to call
Janene Tanner.

THE CLERK: Raise your right hand.

(Witness sworn.)

THE CLERK: Have a seat at the witness
stand. State and spell your name for the record,
please.

MS. TANNER: Janene Tanner. J-a-n-e-n-e,
T-a-n-n-e-r.

JANENE TANNER,
called as a witness, being first sworn,
was examined and testified as follows:

EXAMINATION

BY MR. CALL:

Q. Good afternoon, Janene.

A. Hi.

Q. Could you tell us what your position is here at the court?

A. I am a CM/ECF administrator. So I'm over the electronic filing system. Make sure everything is running properly for the attorneys. And I do some of the attorney training.

Q. Okay. And how long have you been doing that?

A. Well, I've been with the court for 30 years, but probably ten years as the CM/ECF administrator.

Q. And prior to giving your testimony today, have you spoken with anyone else about what you would be testifying to today?

A. My chief deputy, but...

Q. Okay. And who is that?

A. Gary Gfeller.

Q. Okay. Have you reviewed any documents in preparing for your testimony today?

A. Not really, no.

Q. Okay. So do you -- you handle what's

1 called the help desk?

2 A. Yes, I do.

3 Q. Okay. And attorneys contact you by phone
4 or e-mail to -- when they have questions --

5 A. Yes.

6 Q. -- or problems?

7 A. Yes.

8 Q. Okay. And how frequently do calls come
9 in?

10 A. It depends on the day. Today's been
11 rather quiet. I've had a couple calls. So depending
12 on the issues that the attorneys are having. So it
13 varies from day to day.

14 Q. And do -- do the -- are there more e-mails
15 that come in than calls, or more calls?

16 A. I would say more calls than e-mails 'cause
17 usually they want some -- an instant answer to the
18 issue.

19 Q. Okay. And you're familiar with the log-in
20 process that filers use in making a filing with the
21 bankruptcy court?

22 A. Yes. Uh-huh.

23 Q. Okay. And are you familiar with the
24 different types of browsers that are used to log into
25 the filing system?

1 A. Yeah, I'm familiar with them.

2 Q. And do many of the users that file in --
3 or that log in and file documents with the bankruptcy
4 court, do they use Google Chrome?

5 A. Several of them do, yes.

6 Q. So there shouldn't be a problem with an
7 attorney logging into the system to make a filing
8 using Google Chrome?

9 MR. MORRISON: Object -- sorry. I was
10 going to object. It calls for evidence that is --
11 hasn't been presented, and I believe she lacks
12 foundation, but...

13 MR. CALL: Well, I think it has been
14 presented in evidence and -- we have had Exhibit 15
15 admitted and there was testimony concerning the
16 browser.

17 THE COURT: I'm going to overrule the
18 objection.

19 Q. (BY MR. CALL) Okay. Would you look at
20 what's been marked as Exhibit 15?

21 A. Okay.

22 Q. Okay. I'll indicate to you that that is
23 the version of the browser that I, as Bank counsel,
24 used on April 22nd of this year to log into the
25 system.

1 You don't have any understanding that --
2 that using what was the most current version of
3 Google would have been a problem at that time, do
4 you?

5 A. No.

6 Q. In fact, wouldn't it have been normal
7 for -- wouldn't you have expected that a -- that a
8 user would use a more current version of a browser?

9 A. I don't know as far as a current version,
10 but -- 'cause everybody's systems are a little bit
11 different on what they've upgraded to, so...

12 Q. Okay. Did -- did you receive a call from
13 Carrie Hurst on the morning of April 23rd?

14 A. Yes, I did.

15 Q. And did she report to you that there had
16 been some problems with a filing -- attempted filing
17 the evening before?

18 A. She reported that, but it was my
19 understanding that it was mostly that the payment
20 couldn't be made.

21 Q. Okay.

22 A. So I told her how to go about making a
23 payment.

24 Q. Okay. And -- and what did -- how did you
25 tell her to make the payment?

1 A. Normally if the attorney doesn't pay the
2 fees that day, if they log into their filing account,
3 the payment window comes up for them to pay.

4 Or there's another avenue; they can go
5 into utilities and there is an option, Internet
6 Payments Due, and they can select that and make their
7 payments that way.

8 Q. And was that payment made?

9 A. Yes, it was.

10 Q. And was that approximately 9:00?

11 A. It was -- yeah, roughly around that time.
12 Yes.

13 Q. Was it?

14 Would you look at Exhibit -- the Bank's
15 Exhibit Number 10?

16 A. Okay.

17 Q. Do you see that notification?

18 A. Uh-huh.

19 Q. Can you describe what that is?

20 A. Well, it looks like the e-mail
21 notification. It says it's coming from PayServ,
22 that -- that the transaction went through.

23 Q. Okay.

24 A. The payment of 350 for the --

25 Q. And when you say PayServ, are you

1 referring to Pay.gov?

2 A. Oh, not PayServ. Yes, Pay.gov. I'm
3 sorry.

4 Q. Okay. And is the normal payment procedure
5 with -- with Pay.gov?

6 A. Yes, it is.

7 Q. And is that a different system than the
8 EMC [sic] system?

9 A. Yes, it's totally different from the
10 filing system.

11 Q. Okay. And so when someone is using the
12 EMC system, if a payment's to be made that then --
13 isn't that payment required to be made through
14 Pay.gov?

15 A. Yes, it is.

16 Q. And if Pay.gov were not working properly
17 for some reason, what would occur if a filing -- let
18 me back up and restate that.

19 If a -- if a filer was attempting to make
20 a payment of \$350, let's say, to open an adversary,
21 and if the window did not come up, then what -- what
22 would a user do at that time, do you know?

23 A. I don't know -- well, they would have
24 to -- they -- if it didn't come up, they would
25 need -- probably call the court. But I don't know

1 that I've seen the pay window not come up when a
2 fee's incurred with -- with any debt that's being
3 filed.

4 Q. Okay. So let me -- let me show you here
5 what's marked as Exhibit 3. And we have it as the
6 Bank's Exhibit 3. It's on a board here.

7 A. Yes.

8 Q. Can you see that okay?

9 A. Uh-huh.

10 Q. Okay. You're familiar with that --

11 A. Yes.

12 Q. -- screen?

13 A. Right.

14 Q. Okay. And is it your -- can you explain
15 to the Court and to me what that screen represents?

16 A. Well, it's just one of the steps in the
17 opening of an adversary case that that fee window
18 will come up indicating how much is -- will be due
19 after the Complaint is totally filed.

20 Q. Okay.

21 A. So that's just basically an information
22 screen.

23 Q. Okay. And so if -- if a user files the
24 next screen there on -- or the Next button there --

25 THE COURT: Did you say Exhibit 3? I

1 can't see the lower corner of it.

2 UNIDENTIFIED SPEAKER: Page 20.

3 THE COURT: All right. So Exhibit 3,
4 page 20, is the one Ms. Tanner just testified to.
5 Okay.

6 Q. (BY MR. CALL) So at this stage of a
7 filing, where it says Open Adversary Proceeding, if a
8 user were to put -- push the Next button, is it your
9 understanding that the Pay.gov should open up so that
10 payment can be made, or what's your understanding?

11 A. No, it -- it doesn't show up there. I
12 don't know exactly what the next screen is, but it's
13 always been, with CM/ECF that the filing gets
14 completely done before the fee is taken -- or
15 incurred.

16 And then being able to pay after the fee
17 is -- or being paid after the case has been opened --
18 or the adversary proceeding -- the fee window's
19 there. That way, when you click on the pay window,
20 it will take you out to Pay.gov so that you can make
21 that fee payment.

22 Q. Okay. So if a user reaches this stage of
23 the filing process and clicks Next and it doesn't
24 proceed to the next window, would that indicate that
25 the system was not working correctly?

1 A. It's possible.

2 Q. Okay. Is there any other explanation?

3 A. Well -- I mean, I don't know. I mean --
4 but -- if you hit the next window -- I mean the Next
5 button you're going to -- well, get another screen.
6 And I'm assuming that if it didn't -- you couldn't
7 get to the Next button, the system would throw up an
8 error that is, you know, some kind of an issue.

9 Q. Okay. Are you familiar with the demand
10 window screen in the filing --

11 A. Yes.

12 Q. -- of -- of an adversary proceeding?

13 A. Yes. Uh-huh.

14 Q. Okay. And do you -- do you see Exhibit 3
15 here that's blown up on the left side?

16 A. Yes.

17 Q. I don't have the page number, but it's
18 part of Exhibit 3. And do you see there where it
19 says "demand" and then it has parentheticals with a
20 dollar sign and three zeros?

21 A. Yes. Uh-huh.

22 Q. Okay. And is it -- is there anything on
23 this page or anywhere -- well, on this page that
24 would indicate that the dollar sign -- well, let me
25 just ask you. What's your interpretation of how --

1 looking at that document, what's your interpretation
2 as to how a demand amount would be entered into that
3 box?

4 A. Well, I'm familiar with the CM/ECF system.
5 So depending on what your demand amount is on your
6 complain -- I mean on your Complaint, then you would
7 put in the figures. It's, say, you know 150,000, you
8 just put in 150, because the system already -- the
9 system is set up to add the rest of the three zeroes.

10 Q. Okay. And what about -- doesn't it
11 indicate within the parenthetical there that a dollar
12 sign is to be added?

13 A. Well, I don't know if that's the
14 assumption to be made. I mean, when we were trained
15 it's -- we didn't put in the dollar sign.

16 Q. But on -- but on this page you wouldn't
17 dispute that -- I mean, it's pretty clear from its
18 face that the dollar sign was within the
19 parenthetical.

20 A. Well, it's within the parenthetical.

21 Q. Okay. Are you aware of errors that occur
22 if someone puts in a dollar sign before a demand
23 amount?

24 A. Yeah, there's a -- yeah. You'll get an
25 error.

1 Q. Okay. So it's your testimony, then, that
2 if the dollar sign is placed in front of a demand
3 amount that you will not -- that a user is not able
4 to proceed to the next screen?

5 A. Right.

6 Q. Okay. Do you know why -- has there ever
7 been a discussion about correcting that parenthetical
8 to show the dollar sign outside of the parenthetical
9 or to add something indicating that no dollar sign
10 should be added?

11 A. Maybe there's been discussions, but when
12 the system was created, the dollar sign automatically
13 is just populated. So a user doesn't have to even
14 input that.

15 Q. So is there --

16 THE COURT: Mr. Call, I think we may need
17 some foundation about this system. Your questioning
18 suggests that this is a program created by this
19 court, right?

20 MR. CALL: No, I -- it -- my understanding
21 is that it's -- well, not created by the court but
22 it's --

23 THE COURT: Well, you asked Ms. Tanner if
24 there's ever been any discussions about changing that
25 system, suggesting that she somehow has the ability

1 to even have input into that.

2 MR. CALL: Oh.

3 THE COURT: So I'm -- what I'm saying is
4 without the foundation, I think the questioning can
5 be confusing, because the way I heard the question
6 was that she had the ability to somehow alter this
7 program.

8 MR. CALL: Well, can I clari --

9 THE COURT: Yes.

10 MR. CALL: Let me clarify.

11 Q. So, Janene, you don't have the ability to
12 alter the screens that we've been discussing, do you?

13 A. No. This was a program created by our
14 administrative offices, so no.

15 Q. Not the administrative offices here --

16 A. No.

17 Q. -- within --

18 A. In Washington, D.C.

19 Q. In Washington, D.C.

20 A. It's used all over the country, CM/ECF.

21 Q. And do you make recommendations
22 occasionally to the administration office?

23 A. Occasionally -- occasionally there's been
24 recommendations all around the country --

25 Q. Okay.

1 A. -- for things to -- maybe to approve on.

2 Q. Has there been a recommendation with
3 respect to the demand screen?

4 A. Not that I'm aware of.

5 Q. Let me ask you about commas. Are you
6 aware that if a demand amount is put in and a comma
7 is put in whether or not the system would advance?

8 A. No, it won't. You'll get an error.

9 Q. Okay. So if a comma is put into a demand
10 amount, then an error will arise, correct?

11 A. Correct.

12 Q. And what if a period is put into the
13 demand window; is the same true?

14 A. I believe so.

15 Q. Okay. So would it be your testimony that
16 the only way that a demand amount could be placed
17 into that box without -- without receiving an error
18 would be to put in a number without a dollar sign,
19 without a comma and without a period?

20 A. Correct.

21 Q. And if -- if a number is placed into that
22 demand and if it doesn't move forward to the next
23 screen because, let's say, there's a dollar sign on
24 the demand, is there not a Back button that a person
25 can push to back up to the prior screen?

1 A. Well, I think if you get the error, it
2 allows you to correct that.

3 Q. Okay. So if it --

4 A. But you could hit the Back button and...

5 Q. Okay. And clear the number?

6 A. Yeah.

7 Q. Okay. Do you know if the -- when the
8 error arises if it clears the screen or does the user
9 have to clear the screen? When I say "clear the
10 screen," clear the demand.

11 A. I believe the user has to clear the demand
12 and put in the...

13 Q. So a user having a number in there that
14 receives an error -- let's say that the number -- a
15 dollar sign with the number 156 -- or 168 is put
16 into there --

17 A. Uh-huh.

18 Q. -- your testimony is it would never
19 advance to the next screen because there's a dollar
20 sign, correct?

21 A. Correct.

22 Q. And so at that time the user would either
23 have to go in and delete the numbers in that box or
24 else back up to an earlier screen and -- and move
25 back, correct?

1 A. Right.

2 Q. Are you familiar with the term "cache"?

3 A. Yes.

4 Q. And what does that mean to you?

5 A. The information, I guess, that's saved in
6 the browser. Especially if attorneys are having
7 issues, if -- I'll get calls and they can't move
8 forward or there's an error that just keeps repeating
9 themselves, we tell them to clear their browsing
10 history, which is their cache, and get rid of all the
11 information that might be behind the scenes causing
12 the issue -- the problem. And usually once they do
13 that, then they can move forward and complete their
14 docket that they are doing.

15 Q. Okay. Thank you for that explanation.

16 How -- so you're saying that the user
17 wouldn't see the information or data in the cache; is
18 that correct?

19 A. That's correct.

20 Q. And that you would instruct them that in
21 order to clear the cache that they should go back --

22 A. Well, not --

23 Q. -- or clear the cache or -- how do they
24 clear the cache?

25 A. Yeah, clear the cache.

1 Well, every browser is different and -- so
2 they would have to know how to do it. Either -- at
3 the top of the browser there's a place where they
4 can -- it has where you click on in -- at the top of
5 the browser, wherever, there's an option to clear
6 their history, and they could do it for an hour, they
7 could it for all day, but...

8 Q. So if a user put in a dollar number -- a
9 dollar sign with a number of 168 and received an
10 error, and then the box was clear, the user wouldn't
11 necessarily know whether the cache is cleared or not;
12 is that correct?

13 A. No.

14 Q. So there could actually be hidden numbers
15 in the box that the user can't find?

16 A. Well --

17 Q. Or doesn't see?

18 A. I don't know about hidden numbers,
19 especially in that demand amount. You're -- you say
20 you got -- I mean, the error is going to pop up.
21 Usually when attorneys have an error, they can't move
22 forward at all, and so they have to clear out their
23 browsing history. But we, you know, discussed before
24 that the dollar sign -- that error came up, but
25 something needed to be changed.

1 Q. Right. So at the top it has a button that
2 says History, and you're saying that when people call
3 in you can explain to them that they can clear their
4 history?

5 A. Yeah. I guess if you look -- because
6 you've got the screenshot there of Google. There is
7 the three dots at the top -- top right-hand...

8 Q. Uh-huh.

9 A. And usually that's -- when you click on
10 those three buttons there's the option that comes up
11 for history as one of them. So they could go through
12 the steps to clear out the history.

13 Q. But there's nothing on the screen, is
14 there --

15 A. No.

16 Q. -- that says that if you have a problem,
17 this is how you -- you would clear the cache,
18 correct?

19 A. No.

20 Q. But -- and you -- you've affirmatively
21 agreed that it -- you cannot move to the other
22 screens and complete a filing if you cannot get past
23 the demand screen?

24 A. It's been my experience and -- that you
25 could leave that demand amount blank and it will let

1 you go through to the next screen.

2 Q. You --

3 A. You don't have to put a number in there.

4 Q. That's been your experience?

5 A. Yes.

6 Q. So do you know, under the system, does
7 filing of the Complaint occur before the adversary
8 proceeding is opened, or is the adversary proceeding
9 opened before the Complaint is filed?

10 A. Well, there's --

11 Q. Is it simultaneous?

12 A. It's simultaneous. I mean, that's...

13 Q. So if -- if a document says that the
14 adversary proceeding opens, then that would -- that
15 would mean that there was a complaint filed
16 simultaneously with that entry?

17 A. Because your -- your complaint is the
18 document that's getting uploaded into the system,
19 which is, you know, the adversary proceeding. So
20 once it is simultaneous, your complaint is what
21 you're using to open up the adversary, because that
22 has all the information that you're putting into the
23 system. But then once that's all completed and you
24 go through the steps, then your adversary is open.

25 Q. Okay. So the -- you wouldn't have to open

1 an adversary proceeding, pay the fee and then file
2 the complaint?

3 A. No, it doesn't work that way.

4 Q. Instead, the complaint -- the complaint
5 and the adversary open simultaneously?

6 A. Yeah.

7 Q. Okay. Let me show you -- okay. Okay.
8 Are you familiar with what a transaction log is?

9 A. Yes. Uh-huh.

10 Q. Okay. Could you explain to the Court what
11 that is?

12 A. It identifies the steps or behind the
13 scenes of what happened when the case is opened or a
14 docket entry is put on the docket. It gives you an
15 ID number and the event that was used to -- to be put
16 onto the docket.

17 Q. Okay. And so looking at Exhibit 14, could
18 you identify that for us, starting on the left-hand
19 side, to the yellow? Do you see where it has the
20 number?

21 A. Yeah, it has the date.

22 Q. Well, before the date it has the number.
23 Is that the adversary -- what number is that?

24 A. On the yellow, that's the transaction ID.

25 Q. Okay.

1 A. That's not the adversary number at all.
2 That's the transaction ID. Every entry that's put on
3 the -- in the system has a transaction ID.

4 Q. Okay. That identifies that particular --

5 A. Yes.

6 Q. -- transaction entry?

7 A. Yes.

8 Q. And then the date. What does that
9 reflect, the time that that transaction number is
10 recorded?

11 A. Yes. Uh-huh.

12 Q. Okay. And you call -- that's called a
13 log; is that right?

14 A. Yeah. Your transaction log, yes.

15 Q. Okay. And then next to that there's
16 nothing in the case number there, but then go to the
17 right. Could you read that for me?

18 A. This is a temporary log entry to handle
19 timing issues with docketing the same event many
20 times.

21 Q. Have you seen that entry before?

22 A. Not recently.

23 Q. Do you have a memory of ever seeing that
24 entry?

25 A. Not really, no.

1 Q. And when that entry -- the information --
2 can you tell me what your understanding would be as
3 to that language?

4 A. Well, it's timing issues with docketing
5 the same event many times. So -- I mean, the entry
6 -- two entries above that the -- it looks like the
7 adversary proceeding was open and the summons was
8 issued. And so just by that, by maybe clicking the
9 Back button, it's recording that the event that's
10 been entered has already been entered before 'cause
11 it's --

12 Q. So it wouldn't happen in a normal filing,
13 right, because it --

14 A. No, not in the normal finding.

15 Q. Had there not been repeated attempts --

16 A. Right.

17 Q. -- then that entry -- that sort of log
18 would not have occurred, correct?

19 A. Right. Right.

20 Q. So doesn't that occur to you that that log
21 entry is to document that there were (counsel stepped
22 away from mic) timing issues with docketing the same
23 event many times?

24 A. But -- yes, but if you look at your other
25 transaction IDs that happened before that, the

1 Adversary Complaint was opened and then the summons
2 issued. So the adversary was filed. And so the
3 timing issues of going back, it was not going to
4 reopen an adversary -- that's not going to file
5 another adversary proceeding because it's already
6 been there on the docket.

7 Q. Right. But at the time this was entered,
8 the multiple docketing entries would have occurred,
9 right? They wouldn't have occurred after that
10 because this -- this was entered at this period of
11 time right here, correct?

12 A. Right.

13 Q. Okay. So if there were multiple events,
14 they had to have occurred prior to that time; would
15 you not agree? It's not picking up stuff that
16 occurred 30 days -- 30 minutes, 40 minutes later,
17 correct?

18 A. Oh, no. No.

19 Q. Okay. Now let me ask you to look at
20 what's been marked as Exhibit 11.

21 A. Okay.

22 Q. Do you know what a case report is?

23 A. Yes. Uh-huh.

24 Q. Can you explain to the Court and me what
25 that report is?

1 A. There's a cases report option under CM/ECF
2 under reports and you can put a date range in there
3 for cases that were filed on a given day.

4 Q. Okay. Would you turn to Exhibit 11 in the
5 Bank's exhibit book there in front of you?

6 A. Okay.

7 Q. So can you identify what that document is?
8 There's an excerpt of it here on the board, but the
9 Exhibit 14 is a little bit more -- or Exhibit 11 has
10 a little more detail. Can you tell us what that is?

11 A. It's off of the cases report that gives
12 you the -- well, these are the adversary case numbers
13 that were filed and who the party info is and the
14 attorney information.

15 Q. And is this a report that's generated from
16 the -- the court's database?

17 A. Yeah. Of what's been filed, yes.

18 Q. So the attorneys don't have the ability to
19 go in and manipulate this document, do they?

20 A. No. Huh-uh.

21 Q. It would be only generated by the court,
22 correct?

23 A. Correct.

24 Q. And you've seen this -- these kind of
25 reports -- you've actually used this report -- case

1 report identification yourself on occasion?

2 A. Correct.

3 Q. So would you look here at an excerpt of
4 this report here and just identify -- we can go
5 across this row. You see there in the -- the center
6 column -- again of Exhibit 11 -- is it first showing
7 there the -- what is that, the lead -- the first
8 number here, is this the adversary?

9 A. That's the adversary case number. And
10 then it shows the lead bankruptcy case number --

11 Q. Okay.

12 A. -- which is...

13 Q. Allen Beal, Chapter 7?

14 A. Right.

15 Q. And then going to the next column there,
16 the TP?

17 A. It shows -- first it shows the plaintiff
18 information, which is the State Bank of Southern Utah
19 versus Beal. And then they have the attorney that's
20 representing the plaintiff, Steven W. Call. Then the
21 attorney for -- well, another attorney for the
22 plaintiff, Justin Michael Kuettel. And attorney for
23 the defendant, William B. Morrison.

24 Q. Right. And then next is --

25 A. It's the judge who is involved.

1 Q. Right. And then explain for us, if you
2 will, what the next box -- what the next boxes
3 represent.

4 A. There's a file date of 4-23 and an enter
5 date of 4-22.

6 Q. Okay.

7 A. And --

8 Q. And then what are the -- okay. Let me ask
9 you, have you ever seen an occasion where those two
10 dates are different?

11 A. I haven't.

12 Q. Okay. And just the final part of that row
13 is other information that just reflects this is the
14 Salt Lake office, right?

15 A. That is correct. Uh-huh.

16 Q. Now, it -- it's my understanding that --
17 that the ECF manual for the district court is revised
18 and updated quite regularly, but that there hasn't
19 been a revision made to the ECF manual with the
20 bankruptcy court for more than a decade. Is that
21 correct?

22 A. That's true.

23 Q. And is it also accurate that at one time
24 Kyle Quail, you and Carol began a process a few years
25 ago to update the manual but that that was abandoned?

1 A. Well, I think you have your parties wrong
2 there, but...

3 Q. Well, I thought these were the names you
4 gave me when we visited. Who is Kyle Quail?

5 A. It's Kyle Crockett.

6 Q. Oh, Crockett. I'm sorry.

7 A. Yeah.

8 Q. Kyle Crockett and Carol --

9 A. Jared Johnson and John Willardson. The
10 four of us worked on...

11 Q. Gerald Johnson?

12 A. Jared.

13 Q. Jared.

14 And who was the other person?

15 A. John Willardson.

16 Q. John Willardson.

17 And you worked on some re -- possible
18 revisions to the manual -- this was in 2014?

19 A. Yeah, something. Around there, yes.

20 Q. But my understanding was that those
21 efforts were never completed. Is that a better
22 statement?

23 A. The assignments and duties changed of
24 individuals so we never did complete it. But CM/ECF,
25 at least with the bankruptcy court, the procedures

1 never -- and the steps never really changed that
2 much. So we didn't really find it of benefit to keep
3 it updated.

4 Q. Do you have copies of the revisions that
5 you all started on, to the manual?

6 A. I probably could find them, but I don't --
7 we didn't get really that far into it.

8 Q. Do you ever coordinate with the district
9 court regarding its revisions and updating to its
10 manual?

11 A. No, we don't because -- yeah, their filing
12 systems are CM/ECF, but the way they file documents
13 and their type of pleadings, they are totally
14 different from the bankruptcy court.

15 MR. CALL: Okay. Okay. Thank you.

16 CROSS-EXAMINATION

17 BY MR. MORRISON:

18 Q. Okay. Let's see. So this document here,
19 Exhibit 11 that we have blown up here, I just wanted
20 to ask you a quick question about the file date.
21 (Counsel stepped away from mic).

22 THE CLERK: Mr. Morrison, you'll need to
23 speak into a microphone.

24 MR. MORRISON: Okay. Sorry.

25 Q. So you -- you saw where I was pointing on

1 that exhibit?

2 A. Yes.

3 Q. Thank you.

4 Do you see the filing date was April 23rd,
5 and then there's a different enter date of 4-22-19?
6 Do you have an understanding of why those dates might
7 be different in this particular case?

8 A. The report we -- the report is really -- I
9 mean, it's just a report. What we real -- go by
10 and -- 'cause not all the reports, you know, are --
11 are perfect. And there has been other issues with,
12 you know, different reports -- not necessarily this
13 one but with other reports that you run.

14 What's -- we go by and what I tell the
15 attorneys when I'm training them is, You need to
16 look -- and we discussed this yesterday -- the notice
17 of electronic filing. And I believe Gloria gave you,
18 you know, an example of that. And that gives the
19 attorneys the date and the time of when their
20 document was filed with the court.

21 And I stress in the trainings that we have
22 them -- especially if they are new on filing with the
23 court -- that they need to make sure that they get
24 that notice of electronic filing to, you know,
25 indicate to them and to the court that their document

1 or pleading entry got put on the court's docket.

2 Q. Okay. Very good. And the term there
3 that's used as filed, is that referring to the filing
4 of the Adversary Complaint?

5 A. Yeah, that's what you would take from
6 that.

7 Q. Okay. And then what does the term
8 "entered" refer to, if you know?

9 A. I would -- like I say, the reports --
10 THE COURT: So he said if you know,
11 Ms. Tanner.

12 MR. MORRISON: Yeah.

13 MR. CALL: I'm going to object for lack of
14 foundation.

15 THE WITNESS: I don't know.

16 MR. MORRISON: That's why I was asking if
17 she knew.

18 THE WITNESS: No.

19 THE COURT: And she was trying to answer
20 and I was just making sure she understood --

21 MR. MORRISON: Yes.

22 THE COURT: -- "if you know."

23 MR. MORRISON: Yes.

24 Q. And your response, just so we have a
25 record of that, was you don't know?

1 A. I don't.

2 Q. Okay. Thank you.

3 All right. I believe that you testified
4 that you help -- you're one of the individuals that
5 helps man the help desk at the court. Is that right?

6 A. Yes.

7 Q. And what are the hours of operation for
8 the help desk, typically?

9 A. Typically 8:00 to 4:30, but usually I'm
10 here later. So it could be after 5:00.

11 Q. Okay. And is the help desk 24/7 hours of
12 operation or does it end when you go home?

13 A. It ends when I go home, yes.

14 Q. Okay. It's not going to be open at
15 11:50 p.m.?

16 A. No. I kind of would like a life after I
17 leave the court.

18 Q. Okay. Thank you.

19 And you're involved in the -- in the
20 training for users that use the CM/ECF system --
21 filing system?

22 A. Correct.

23 Q. Is that one of your main responsibilities?

24 A. I wouldn't say "main," but it's one of my
25 duties.

1 Q. Okay. Very good.

2 How often do you perform training
3 services?

4 A. Once a month.

5 Q. Do you know or can -- do you recall if you
6 might have trained Mr. Call in -- in using that --
7 that service?

8 A. No, I wasn't training at that time. We
9 had other trainers involved.

10 Q. Very good.

11 THE COURT: What time?

12 MR. MORRISON: At the time that he would
13 have done the training.

14 THE COURT: Do you have any idea when that
15 was?

16 MR. MORRISON: Well, he testified it was
17 several years ago. That's all that he testified to.

18 Q. So I was just asking if you were involved
19 in -- in doing any training for Mr. Call.

20 A. No.

21 THE COURT: Thank you.

22 Q. (BY MR. MORRISON) I think you testified
23 that the manual for CM/ECF users has not been updated
24 for approximately ten years or longer.

25 A. Correct.

1 Q. And the reason for that is the steps -- I
2 think you testified the steps don't change much so
3 there's not really a benefit to completing the
4 revisions?

5 A. Correct.

6 Q. Are you familiar with the old manual going
7 back approximately ten years or so?

8 A. It's been a while since I've looked at it,
9 but...

10 Q. You've reviewed it -- or you had reviewed
11 it at some point?

12 A. Yes.

13 Q. Okay. I guess I just wanted to ask if you
14 were familiar with what the manual might say as far
15 as it being appropriate for the data entry field,
16 when you're entering a demand when you're filing an
17 adversary complaint.

18 A. I do have -- of course I didn't make
19 copies for everyone. Sometimes -- maybe the
20 attorneys can't attend our training, and so we'll --
21 we have a practical exercise. And depending on who
22 the attorneys represent, if they are representing a
23 debtor or a creditor, then we'll give them an
24 exercise on what to do. And one of them, for a
25 creditor, is to open an adversary proceeding. And it

1 goes through the steps and what they need to do and
2 the information they need to put in to -- when they
3 open an adversary case.

4 Q. Okay. Fair enough. Okay. Turned around
5 the Exhibit 3 -- the blowup of Exhibit 3 -- and I
6 just wanted to get some clarification on your
7 interpretation of the Demand field. How do you
8 interpret what's in parentheses? Is that the
9 information that's already entered into the field?

10 A. It is. I mean, base -- because I know how
11 the system works, it -- I know that adding the
12 zeros -- I mean, those zeros there are automatically
13 going to be added after you put in that number of
14 what you're demanding.

15 Q. And the dollar sign, likewise, is already
16 going to be added?

17 A. Yes.

18 Q. Okay. How long have you done training for
19 CM/ECF users for the court?

20 A. Going on three years.

21 Q. Has there ever been any point in time
22 during the course of your training that you would
23 train users to put in a dollar sign in that field?

24 A. No, I wouldn't.

25 Q. Okay. If a dollar sign had been entered,

1 would that not constitute user error?

2 A. Well, it could give you an error.

3 Q. What would be the error message?

4 A. I'm not for sure what it would be.

5 Q. Okay. But you'd seen an error message
6 from that?

7 A. Yes, you would.

8 Q. So if you entered a dollar sign, you're
9 going to get an error message, which tells you that
10 you are not entering in the correct information?

11 A. Correct.

12 Q. And you would also get an error message if
13 you entered a comma in that field, correct?

14 A. Correct.

15 Q. Which, once again, tells you that you are
16 not entering the correct information?

17 A. Correct.

18 Q. And if you enter a decimal point in that
19 field, once again, that would prompt an error
20 message?

21 A. Correct.

22 Q. Because you're not entering the correct
23 information?

24 A. Right.

25 Q. And the error message is intended to help

1 you so that you enter the correct information?

2 A. Correct.

3 Q. And so you can move forward to the next
4 screen?

5 A. Exactly.

6 Q. In the course of your training for CM/ECF
7 users, have you ever trained filers to enter a
8 decimal point when they are entering a number in that
9 field?

10 A. No.

11 Q. Have you ever trained users to enter a
12 comma in that field?

13 A. No.

14 Q. Were you here in court yesterday when
15 Mr. Call testified?

16 A. Yes.

17 Q. And did you hear his testimony as far as
18 the experience that he had in attempting to file the
19 Adversary Complaint in this case?

20 A. Yes.

21 Q. Okay. And did you hear his testimony that
22 referred to the multiple times that he hit the Back
23 button?

24 A. Yes, I did.

25 Q. Okay. Do you train users to hit the Back

1 button when they experience an error in the course of
2 filing a document?

3 A. It would depend on the error, because in
4 this instance, with the demand amount, because you're
5 getting an error window that comes up, I would --
6 don't see the need that you would need to hit the
7 Back button to fix that error.

8 Q. Okay. Very good.

9 So do you have the State -- State Bank's
10 exhibit binder in front of you?

11 A. Yes.

12 Q. And could you open that to Exhibit 3,
13 page -- page 13? And I think it would be the second
14 doc -- the second page --

15 A. Log-in page? Is that --

16 Q. Yes. Does it have a little 13 at the
17 bottom right corner?

18 A. Yes.

19 Q. Okay. Thank you.

20 At the very bottom of that document it
21 says, "CM/ECF has been tested using Firefox and
22 Internet Explorer," correct?

23 A. Correct.

24 Q. It doesn't say anything about being tested
25 for Google Chrome?

1 A. No, it doesn't.

2 Q. Okay. I'm just directing your attention
3 to April 23rd, the day after the bar date in this
4 particular case for filing an objection to discharge.
5 Do you recall having any conversations by phone or
6 otherwise with Mr. Call that day?

7 A. I did with Carrie Hurst in the morning
8 regarding the payment.

9 Q. But what about Mr. Call?

10 A. I don't remember. I did speak with
11 Mr. Call, but I don't remember if it was that day or
12 maybe the following day.

13 Q. Okay. I guess the question I had was
14 whether Mr. Call had reported that -- or, rather,
15 that you told Mr. Call that the problems and error
16 messages that he had received reflect that the
17 software was not operating correctly. Is that
18 something you told Mr. Call?

19 A. No, I didn't.

20 MR. MORRISON: Thank you.

21 Nothing further, your Honor.

22 MR. CALL: Just one question, I think.

23 REDIRECT EXAMINATION

24 BY MR. CALL:

25 Q. The debtor has presented as an exhibit in

1 this case, one of his few exhibits, the district
2 court manual for electronic filing. It doesn't have
3 any relevancy whatever to filings made in the
4 bankruptcy court, does it?

5 A. No. Huh-uh.

6 Q. In fact, it doesn't address --

7 MR. MORRISON: Your honor -- sorry. I
8 object. That's beyond the scope of my examination,
9 but I have not presented that as an exhibit in this
10 case. It's not part of our evidentiary exhibits.
11 I'm not trying to --

12 THE COURT: I was trying to -- I was lost,
13 Mr. Call, because, first of all, your reference to it
14 being one of the debtor's exhibits -- it hasn't been
15 discussed before and it's not in the exhibit binder.
16 It was filed -- I believe filed -- provided for
17 with -- it was provided to us as one of your
18 exhibits. And my understanding, you filed it with
19 the court.

20 UNIDENTIFIED SPEAKER: Back in July when
21 we were asked to file exhibits -- it would have been
22 filed back then.

23 UNIDENTIFIED SPEAKER: Well, we were given
24 an exhibit -- just to complete it; that manual has no
25 relevance.

1 UNIDENTIFIED SPEAKER: Just don't see how
2 this is relevant.

3 THE COURT: Well, both of you agree.

4 UNIDENTIFIED SPEAKER: We agree, yes.

5 THE COURT: And you agree too, right, no
6 relevance?

7 THE WITNESS: No relevance.

8 THE COURT: All right. Any other
9 questions?

10 MR. CALL: No, your Honor. Thank you.

11 THE COURT: You may step down.

12 Does she need to be here? Can she go back
13 to work if she wants?

14 MR. CALL: She -- we can excuse --

15 THE COURT: We can excuse her?

16 MR. MORRISON: We'll excuse her.

17 MR. CALL: I will excuse her.

18 THE COURT: I will take a quick recess.

19 THE CLERK: All arise.

20 (Recess taken.)

21 THE CLERK: Court resumes in session.

22 Please be seated.

23 THE COURT: All right. Mr. Call, do you
24 have another witness?

25 MR. CALL: Yes. We would like to call --

1 or I would like to call Russell Jones.

2 THE COURT: Mr. Jones, if you would come
3 forward and be sworn.

4 THE CLERK: Raise your right hand.
5 (Witness sworn.)

6 THE CLERK: Have a seat on the witness
7 stand. State and spell your name for the record,
8 please.

9 THE WITNESS: Russell Jones.
10 R-u-s-s-e-l-l, J-o-n-e-s.

11 RUSSELL JONES,
12 called as a witness, being first sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. CALL:

16 Q. Thank you.

17 Russell, what is your position with the
18 court?

19 A. Unit system administrator.

20 Q. And how long have you been in that
21 position?

22 A. Twenty years.

23 Q. And what are your duties?

24 A. Maintaining the system, like checking the
25 file space and putting on updates.

1 Q. And when you say "updates," updates to
2 what?

3 A. To the database and CM/ECF program.

4 Q. So you are able to -- are these updates
5 that you program or someone else programs?

6 A. The A0 sends those to us.

7 Q. Okay. So you -- when those updates come,
8 you integrate those into the software?

9 A. Yes.

10 THE COURT: Just so the record is clear, I
11 think Ms. Tanner may have used the acronym A0.
12 Mr. Jones just used the acronym A0. Someone reading
13 the record may not know what A0 is.

14 THE WITNESS: Administrative Office of the
15 U.S. Courts. They create the programs and send them
16 to us.

17 THE COURT: Okay.

18 Q. (BY MR. CALL) And so they send them to
19 you via e-mail or in a flash drive?

20 A. They send us an e-mail -- or notice saying
21 they're available and we can download them from their
22 site.

23 Q. Okay. I see. So that's one of the -- the
24 duties you perform?

25 A. Uh-huh.

1 Q. Have you spoken with anyone about your
2 testimony today?

3 A. No.

4 Q. Have you reviewed any documents in
5 preparing for your testimony today?

6 A. No.

7 Q. And were you present -- you've been
8 present in the courtroom today and yesterday when the
9 testimonies were given?

10 A. Yes.

11 Q. Okay. So you consider yourself to be
12 quite familiar with the ECF software?

13 A. No.

14 Q. You're not?

15 A. I don't run these screens.

16 THE COURT: Just so the record's clear,
17 he's gesturing towards the demonstrative exhibits --

18 THE WITNESS: The CM/ECF --

19 THE COURT: -- posters.

20 THE WITNESS: -- program.

21 THE COURT: Okay.

22 THE WITNESS: People like Janene take care
23 of that.

24 Q. (BY MR. CALL) But you have some
25 familiarity with these screens, do you not?

1 A. Yeah. I've seen them, but I've never been
2 trained on their use.

3 Q. You have not? Do you address problems
4 that Janene may confront in connection with her
5 helping users?

6 A. That would be the flow. If users reported
7 a problem to her, then she would report it to me, but
8 I can't think of that happening.

9 Q. You don't have a recollection of that ever
10 happening?

11 A. No. I'm sure it did in the early days,
12 but I can't think of any incidents within the past
13 several years.

14 Q. Okay. So if I -- in looking at what's
15 been marked here as Exhibit 3, you understand that
16 that's one of the screens in the ECM --

17 A. ECF.

18 Q. Or ECF filing system?

19 A. Yeah.

20 Q. And are you familiar with the -- how a
21 user progresses through the system?

22 A. Roughly. I know that they would -- on
23 this one, Exhibit 3, they would put in the proper
24 values and select them and then click Next.

25 Q. Okay. And have you -- have you dealt with

1 issues where metadata may -- metadata is stored in a
2 cache of the user?

3 A. I'm familiar with it.

4 Q. And can you explain that, what -- what
5 that is?

6 A. Well, it -- there are different Internet
7 browsers -- or web browsers, they are called, and
8 they have different ways of caching data.

9 Q. Okay.

10 A. And so we know that when people have a
11 problem, if we tell them to clear their cache and
12 start over, that usually takes care of it.

13 Q. Okay. So do you happen to know, looking
14 over at Exhibit 3, which is the board on the right,
15 Bates number 20 -- are you familiar with that screen?

16 A. No.

17 Q. No?

18 Do you know what screen follows that
19 screen?

20 A. No.

21 Q. Okay. Coming back to Exhibit 3, over on
22 this left side, do you know whether or not a user can
23 progress or advance to the next screen if a demand
24 amount is not inserted into the demand window?

25 A. No, I'm not familiar with that.

1 Q. Okay. Are you familiar with problems --
2 or are you familiar with the issue about if a number
3 is not entered in a certain manner that the window
4 will not progress or advance?

5 A. No, I'm not familiar with that, but it
6 seems like that would happen. If it was required, it
7 would tell you -- it would prompt you.

8 Q. With an error message?

9 A. Perhaps.

10 Q. What other prompt would there be besides
11 an error message?

12 A. For example, when -- I've done some
13 testing that -- there's a box where you can upload a
14 document. And then if you go next, it says you need
15 to -- you can enter a document or upload a document.
16 It looks like a -- an error or a problem, but
17 actually you can just say that's okay, that was my
18 intention not to do it.

19 Q. Okay. Okay. Let me show you here what's
20 been marked as Exhibit 11 and Exhibit 14 of the
21 Bank's exhibits. Are you familiar with what a case
22 report is?

23 A. Yes.

24 Q. Okay. Can you describe what your
25 understanding of that report is?

1 A. You can put in a date range and the --
2 like the type of case or the chapter, and it will
3 show you the ones that were entered or filed --

4 Q. Okay.

5 A. -- during that time period.

6 Q. Okay. And you said -- you used the term
7 "entered or filed"; is that right?

8 A. Yeah. I believe you can select those
9 different -- entered or filed dates.

10 Q. Oh, I see. Okay.

11 And on this particular Exhibit 11, do you
12 see in the center column there that it is referring
13 to this -- the case at issue here before the Court?

14 A. Okay.

15 Q. The State Bank?

16 A. Yeah. I was never told the case numbers,
17 but okay.

18 Q. Okay. Do you see the -- in the columns
19 there -- in the first column it identifies the
20 adversary proceeding, the bankruptcy case number?

21 A. Yes.

22 Q. Okay. So if you go over to the fourth
23 column -- let's see, one -- you see the second column
24 says AP?

25 A. Yeah.

1 Q. Do you know what that stands for?

2 A. I think it means adversary proceeding, the
3 type of case.

4 Q. And then you see the party information in
5 the next column?

6 A. Yes.

7 Q. And then the -- the judge has signed the
8 adversary proceeding?

9 A. Yeah.

10 Q. Okay. And then in the next column there
11 it has the dates, correct?

12 A. Correct.

13 Q. And what are those dates? What's your
14 understanding as to what those dates are?

15 A. The "entered" is when it was physically
16 entered onto the system, and "filed" is, like, when
17 it was filed with the court.

18 Q. Okay.

19 A. So, for example, if someone comes in very
20 late in the day and they submit something over the
21 counter, they won't have -- the case managers will
22 wait until the next day or the next workday to enter
23 it. So they would put the filing date as the day
24 they received it, but the entered date would be the
25 date when the case manager put it on the system.

1 Q. Okay. So in this case if it says
2 something was entered on the 22nd, is that --
3 would -- am I understanding that that would have been
4 a date that it would have been entered?

5 A. Well, it's my understanding that for
6 outside users, like attorneys and trustees, that the
7 filed and entered dates will always be the same.

8 Q. They will always be the same? So in this
9 particular case they are not the same, are they?

10 A. No.

11 Q. Okay. And would you -- do you -- do you
12 have any reason -- well, strike that.

13 Will you look over at Exhibit 14?

14 A. Okay.

15 Q. Do you know what a transaction log is?

16 A. Yes.

17 Q. And what is it?

18 A. A log of the actions that take place on
19 the system.

20 Q. So you're familiar with that -- that
21 report?

22 A. Yes, somewhat.

23 Q. Okay. And do you see there on the third
24 row that's highlighted in yellow the -- a log entry
25 that was made?

1 A. Yes.

2 Q. Okay. And do you see on the left-hand
3 side it has the ID number? And I believe you heard
4 Janene testify that that's a specific ID number for
5 that particular entry?

6 A. Yeah.

7 Q. And then next to it has a date -- a date
8 of that particular entry. Do you see that?

9 A. Yes.

10 Q. Now, isn't it accurate that that would
11 have been the date that that particular item was
12 logged into the system on the database?

13 A. Yes.

14 Q. Okay. And then if I go over there to the
15 far right column, could you read that language?

16 A. "This is a temporary log entry" -- that --
17 "to handle timing issues."

18 Q. Yeah, would you read that whole --

19 A. Okay. This is a --

20 Q. Can I just have you speak into the
21 microphone?

22 A. Okay. "This is a temporary log entry to
23 handle timing issues with docketing the same event
24 many times. 22196349."

25 Q. Have you ever seen that log-in entry

1 before?

2 A. Once in a while.

3 Q. Okay. Now, what -- what is it referring
4 to, do you know? Do you have -- do you have an
5 understanding of it? I'm not asking you to
6 speculate. If you know, then I'd like you to tell
7 us.

8 A. Well -- no, I don't know exactly when.

9 Q. Do you have an understanding?

10 A. I have a -- well, it could possibly occur
11 for different things, but my understanding is, is
12 when someone uses the back arrow and forward arrow
13 and the Next, they try to resubmit something they
14 have already re -- they have already submitted. So
15 it's basically saying you already submitted this, so
16 I'm not going to do it again.

17 Q. Okay. And is that what it's referring to
18 where it says "docketing the same event many times"?

19 A. I presume.

20 Q. Is that -- I think that -- isn't that what
21 you just testified to?

22 A. Well --

23 THE COURT: I heard what he said,
24 Mr. Call.

25 MR. CALL: Okay.

1 THE COURT: He said he didn't know. He
2 said he has an understanding and he's not -- and he
3 presumes that it might be something.

4 THE WITNESS: I'm not an expert on all of
5 these.

6 THE COURT: Okay.

7 Q. (BY MR. CALL) You -- you weren't involved
8 with any sort of recommendations regarding the
9 updating of the manual, were you?

10 A. No.

11 Q. Okay. Now, do you recall a telephone call
12 that you and I had on April 23rd?

13 A. Yes.

14 Q. Okay. And did I not report to you that I
15 had encountered problems in attempting to make a
16 filing?

17 A. Yes, you did.

18 Q. And did we -- did I not report to you
19 certain error messages that I received during the
20 filing process?

21 A. Yeah, I think I remember about the
22 non-integer or missing value or something.

23 Q. Okay. And we had a discussion about that
24 problem, correct?

25 A. Yes.

1 Q. And did you not give me an explanation
2 about problems that occur when the backup button is
3 used?

4 A. Well, I'm aware that they can happen, so
5 I -- that's what -- that would be usually what my
6 standard recommendation to an end user would be, is
7 to clear their cache or start over.

8 Q. Okay. And did you not indicate that --
9 that in those events that sometimes backing up to a
10 single screen just simply doesn't solve the problem
11 and that you told me that you need to go back to the
12 blue screen or log out and re-log in?

13 A. Yeah, I -- I think I said that.

14 MR. CALL: Thank you.

15 CROSS-EXAMINATION

16 BY MR. MORRISON:

17 Q. Hello, Mr. Jones. I don't have a lot of
18 questions for you. Just a couple questions,
19 actually.

20 Let's start with this conversation that
21 you had with Mr. Call on April 23rd.

22 Did you ever tell Mr. Call that the
23 problems that he was reporting were due to ECF
24 software malfunctioning or not working properly?

25 A. No.

1 Q. Okay. Looking at this blowup of
2 Exhibit 11, do you know -- do you know why the filed
3 and entered date, which are highlighted in yellow
4 there, are different in this particular case?

5 THE COURT: Well, it's been asked and
6 answered, but go ahead. I'll allow the question.

7 Q. (BY MR. MORRISON) Do you know why those
8 dates are different?

9 A. The only reason I know is because we had a
10 prior meeting, and Mr. Gfeller found the reason.
11 It's just a quirk of that report.

12 Q. Okay. And he would be a better person to
13 testify to that, then?

14 A. Yes.

15 Q. Okay. Thank you.

16 Are you familiar with the error message
17 case opening failed, writing answer record? Are you
18 familiar with that?

19 A. No.

20 MR. MORRISON: Okay. Thank you.

21 Nothing further, your Honor.

22 THE COURT: All right. Any other
23 questions, Mr. Call?

24 *

25 *

REDIRECT EXAMINATION

BY MR. CALL:

Q. Are you able to tell us -- or give us a list of the different error messages that come up under the E -- under the ECF system?

A. Huh-uh. I could research that.

Q. Okay. But you don't know those today, do you?

A. No.

Q. But aren't there several?

A. Yeah.

MR. CALL: Okay. Thank you.

THE COURT: All right. You may step down, Mr. Jones.

And he may be excused as well?

MR. CALL: Yes.

MR. MORRISON: Yes.

THE COURT: All right. Do you have another witness, Mr. Call?

MR. CALL: Well, I -- I guess we would call Gary Gfeller.

THE COURT: All right, Mr. Gfeller, if you would come forward, please.

(Witness sworn.)

THE CLERK: Be seated at the witness

1 stand. State and spell your name for the record,
2 please.

3 MR. GFELLER: Gary Gfeller. G-a-r-y,
4 G-f-e-l-l-e-r.

5 GARY GFELLER,
6 called as a witness, being first sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. CALL:

10 Q. Thank you, Gary. May I call you Gary?

11 A. Yes, you may.

12 Q. Okay, Gary. What is your position with
13 the court?

14 A. I am the chief deputy, and I'm also the
15 acting IT manager.

16 Q. Okay. And how long have you been doing
17 that?

18 A. In this court I have been doing that since
19 November 30th of 2015.

20 Q. And before that did you do something
21 similar with a different court?

22 A. Yes. I've had -- I've been with the
23 courts -- U.S. courts, and particularly in the
24 bankruptcy courts, for about 27 years.

25 Before this I was the -- a little over

1 three years as a clerk of court in the Connecticut
2 bankruptcy court.

3 Prior to that was the IT manager with
4 primary responsibility for the ECF system and the --
5 and its predecessor. That was 15 years in there.

6 And then I was -- spent five years in the
7 Ohio northern bankruptcy as the IT manager for that
8 court.

9 Q. So in preparing for your testimony today,
10 have you spoken to anyone about what you would be
11 testifying to?

12 A. No.

13 Q. Okay. So no conversations with Russell or
14 with Janene or with Gloria?

15 A. I've talked to them a little bit about
16 certain things, yes.

17 Q. Regarding this case?

18 A. Yes.

19 Q. Okay. And when did those conversations
20 occur?

21 A. So they've occurred this morning. They
22 occurred after noon. They occurred even before this.
23 I mean, we've talked about this -- the issue since we
24 had the meeting a couple weeks ago.

25 Q. Okay. So since we had the meeting you've

1 spoken with -- with Janene -- with Janene?

2 A. Janene, Russ, yeah.

3 Q. And with Russ. Did you speak with Gloria?

4 A. No. And it's primarily because these
5 folks are the ones who actually are dealing with the
6 IT -- background of the information, the training
7 stuff and things like that. That's the area I'm
8 responsible for --

9 Q. Okay.

10 A. -- for the court. So I need to make sure
11 that they are -- we are all on the same page in terms
12 of other issues that come up coming down the road.
13 So I'm making sure that the system is operational for
14 the future uses.

15 Q. Did you talk -- did you speak with them
16 about any of the particulars of this particular case?

17 A. Yes, probably.

18 Q. And did some -- and some of those
19 conversations occurred this morning, you say?

20 A. Yes.

21 Q. And do you recall what the subjects were
22 of those conversations?

23 A. Mostly the -- what I have determined, some
24 of the issues -- 'cause one of the things that I'm
25 responsible for is to -- making sure the system is up

1 and running, and so I want to make sure that I can
2 understand why things happened the way they happened
3 and what the screens look like. So from that
4 perspective, I show them what I was able to determine
5 in the system.

6 Q. So after this proceeding began you met
7 with the other witnesses and explained to them the
8 proceedings that were before this court?

9 A. Not -- not exactly. So I -- this morning
10 I did some testing on the system to see how I can
11 replicate some of the things that occurred here. So
12 as a (indistinguishable).

13 Q. And what, specifically, did you try to
14 replicate?

15 A. So I tried to replicate the -- or I
16 already knew about the issue with the demand. I
17 tried to replicate the issue with the transaction
18 log, and I was able to replicate that.

19 And it's also something that we discussed
20 a couple weeks ago, and I was just confirming what I
21 already told you back then and what we already --
22 already discussed at that meeting.

23 Q. When you say "we discussed," you are
24 referring to when counsel met with you?

25 A. Yes.

1 Q. Okay.

2 A. And our group.

3 Q. And your group.

4 So you -- but -- but my understanding is,
5 is that you went through those -- that information
6 prior to our meeting and that you had made no -- you
7 had kind of looked at this issue then, before we
8 discussed.

9 A. No. So at that original meeting that we
10 had a couple of weeks ago, that was the first time
11 that we had discussed that, the first time I saw any
12 of these things that were being discussed about
13 today.

14 And at that point, during that meeting, I
15 actually got on the system and looked at a couple
16 things to determine. In fact, I already knew some of
17 the answers. I actually dis -- gave you a lot of the
18 answers there at that meeting. And then I just
19 verified that on the system during that meeting.

20 And the one thing I did not verify was the
21 transaction log entry, which I have verified this
22 morning.

23 Q. Okay. So -- so were you given information
24 from the other witnesses or were you speaking --

25 THE COURT: So, Mr. Call, I'm not sure

1 what it is you're trying to establish here. Are
2 you -- I think Mr. -- I think I sense what you're
3 trying to suggest, that these people have gotten
4 together and discussed what they're going to testify
5 to as opposed to what the problem was.

6 MR. CALL: Right.

7 THE COURT: And so what you're trying to
8 suggest is that these three people sat down, got
9 together and said, This is how we're going to
10 testify.

11 MR. CALL: No, I -- I don't believe that.
12 I just -- I'm just curious as to why they would meet
13 after the proceeding commenced and why he would be
14 running tests immediately prior to the hearing.

15 THE COURT: You're seriously curious about
16 that? I know why. Everybody knows why. I'm going
17 to take a recess.

18 THE CLERK: All arise.

19 (Recess taken.)

20 THE CLERK: Court resumes in session.
21 Please be seated.

22 THE COURT: So, Mr. Call, the court
23 employees that you called as witnesses, they all have
24 different responsibilities with respect to CM/ECF.
25 And you contacted most of them personally after this

1 issue. And it's -- would only be expected that they
2 would talk to each other about the issue that you
3 were discussing and complaining about, and them
4 trying to understand the issue that you complained
5 about.

6 MR. CALL: Right.

7 THE COURT: And so what I had an issue
8 with with the line of questioning that you started to
9 pursue and continue to pursue is the suggestion that
10 they were suggesting to each other how they were
11 going to testify as opposed to were they discussing
12 the problem and what was the problem that they saw.

13 MR. CALL: Yeah. And I didn't have a
14 problem with them discussing the problem after we met
15 with them a month ago, it's just I didn't anticipate
16 that the witnesses -- I mean, I didn't exclude them
17 from -- from these proceedings because I know that
18 they're under the administration of your Honor, but I
19 just didn't expect that the witnesses would -- would
20 meet and discuss testimony between them during the
21 course of the proceedings.

22 THE COURT: You didn't ask them if they
23 had discussed testimony, and that was -- that wasn't
24 the question you were asking him, but that was the
25 inferences from the questions that you were asking

1 him, and that was the problem that I have had.

2 MR. CALL: Okay.

3 THE COURT: So if you want to be more
4 direct and ask Mr. Gfeller that question, I don't
5 have any problem with that.

6 MR. CALL: Okay.

7 Q. So, Gary, as the Court has indicated, did
8 you have a discussion with any of the other
9 witnesses, Gloria, Janene or Russell, concerning
10 testimony that had been given or that would be given?

11 A. No.

12 Q. Okay. So you -- you have quite a bit of
13 experience with the -- with the filing software,
14 correct?

15 A. I consider myself a subject matter expert
16 on the idea -- on the issue.

17 Q. Okay. And -- and what is the -- is it
18 called -- what -- how do you refer to it? The ECF
19 system?

20 A. We refer to it as the case management,
21 electronic case filing system, or CM/ECF.

22 Q. Okay. And for our -- for my brief
23 questions we'll just call it the filing system.
24 Would that be okay?

25 A. Very good.

1 Q. Okay. So the filing system, does it
2 capture and maintain certain statistical data in
3 connection with a filing?

4 A. Yes.

5 Q. And what information is captured?

6 A. Basically what you see on the transaction
7 log is some of the information that gets captured.

8 Q. Does it capture the date that the filer
9 logs in?

10 A. No, it does not.

11 Q. Okay. Does it capture the -- any
12 attempted filings of documents?

13 A. No, it does not.

14 Q. Okay. So it's -- if a user attempted to
15 file a complaint in an adversary proceeding a number
16 of times, but was unsuccessful, is it accurate -- is
17 it correct to state that the system would not store
18 those attempted filings?

19 A. Probably not.

20 Q. So you can't determine from the filing
21 system software the number of attempted filings that
22 were made in -- in this particular case?

23 A. No, I cannot.

24 Q. You don't have a dispute that there was
25 prompt notice given to you and others about the

1 filing problem on April 23rd, do you?

2 A. I don't understand the question.

3 Q. Were you aware -- was -- were you advised
4 or informed via a call or a communication with Janene
5 or with Russell or with myself that there had been a
6 problem on the 22nd in an attempted filing?

7 A. Not on the 22nd. It was almost midnight.
8 So no, not on the 22nd.

9 Q. I meant -- I'm sorry -- on the 23rd.

10 A. I had heard about it on the 23rd.

11 Q. Okay. And who -- how did you hear about
12 it?

13 A. I don't recall.

14 Q. In your role, do you work on the manual
15 for the filing system?

16 A. I get involved in -- if we were going to
17 do a manual budget. You also have to recognize that
18 we're on version 5 of ECF, 5.2.2. That was -- last
19 major release was done ten years ago, and so there
20 really has been very minor changes to CM/ECF in the
21 last ten years because the concentration by the
22 Administrative Office of the U.S. Courts is on the
23 next gen version of CM/ECF, or the filing system.
24 But if we were to go into that, yes, I would be
25 involved in that.

1 Q. Okay. And then do you know the year of
2 the current filing manual?

3 A. I do not.

4 Q. So you don't know if it's prior to 2009 or
5 not?

6 A. I do not.

7 Q. Okay. And you weren't involved when
8 Janene and the others kind of got together and were
9 making some suggested edits or revisions to the
10 manual?

11 A. No, since I came here only -- since
12 2015 -- December of '15, so less than four years.

13 Q. Oh, okay. So there's been nothing in
14 regards to the manual -- revising or updating the
15 manual since that time?

16 A. Correct.

17 Q. And do you -- can you tell me what window
18 follows this window -- if you'll look at the --
19 what's been marked as the Bank's Exhibit 3, page 20?

20 A. Yes.

21 Q. Are you familiar with that screen?

22 A. Yes.

23 Q. Okay. And can you tell me what -- what
24 screen follows that particular window?

25 A. Sure. I have a copy of it right with me.

1 Q. Okay.

2 A. It's a display message.

3 Q. And what does it display?

4 A. "Please note, filing this adversary is not
5 construed as an automatic notice of appearance and
6 request for notice in the related main case. To
7 ensure a notice in that main case, you may wish to
8 file a pleading in that case."

9 Q. Okay.

10 A. And it gives you a Next or a Clear button.

11 Q. Okay. Do you know, in the process of the
12 filing, where the Pay.gov window arises?

13 A. Yes, I know where -- where it arises.

14 Q. And where does it arise?

15 A. At the very end of the transaction. After
16 you receive your notice of electronic filing, that's
17 when you receive notification of payment, if a
18 payment is due.

19 Q. Okay.

20 A. And you'll get a window that basically
21 says either pay now or continue filing.

22 Q. Okay. So in this case would you agree
23 that if a user could not get past this window that --
24 that there wouldn't be -- for whatever reason, just
25 assuming that that window -- at that stage it was

1 frozen and the user couldn't get past that window --
2 then you would agree that there wouldn't be a method
3 to complete the filing. Is that correct?

4 A. If that happened, I would say yes, you
5 probably couldn't complete the filing if you couldn't
6 get past that, but it seems very unreal --
7 unrealistic, because it's just a Next button.

8 Q. Okay. But if you hit the Next button and
9 nothing happened, or if you received an error, you
10 agree that you couldn't complete the filing?

11 A. Yes, I would agree.

12 Q. Okay. And you would agree that you
13 couldn't complete the payment at that time?

14 A. You can never complete the payment until
15 the end of the transaction, until the notice of
16 electronic filing has been completed. So you never
17 pay prior to the end of that. And it's been like
18 that since 2001 when this court received the filing
19 system and when I implemented it in Vermont in 2001,
20 so...

21 Q. Okay. And so if the filing is completed,
22 then should a filer be able to -- to pay?

23 A. Yes, they should be able to pay at that
24 point. Or they cannot pay. They don't have to pay.
25 So the system gives you the ability to pay now or to

1 continue filing.

2 Q. Okay. So --

3 A. And if you don't get the screen, it's not
4 a big deal either, because what constitute filing is
5 the date and time on the notice of electronic filing.

6 Q. Right. But your understanding is, is that
7 once the filing is complete, the filer would be --
8 would be given the opportunity to pay at that time?

9 A. That is correct.

10 Q. And so have you had issues with -- did
11 you -- you heard Mr. Jones' testimony concerning that
12 Pay.gov is different software?

13 A. Correct, it is.

14 Q. It is, correct?

15 A. Yes.

16 Q. Okay. And, in fact, to make the payment,
17 isn't it true that you have to -- you have to be --
18 the filer has to be taken to the Pay.gov -- what
19 would you call it, switch, in order to make the --

20 A. It's the Pay.gov site, yes.

21 Q. Site. But doesn't that arise
22 automatically after a filer has completed the filing?

23 A. It can. You get a window when you opt to
24 go to Pay.gov to pay now or you opt to wait until the
25 end of the day, for instance, and do all your

1 things -- all your payments at once.

2 Q. Right.

3 A. And it's ideally for people who do
4 multiple -- multiple filings in multiple
5 bankruptcies.

6 Q. Right. And isn't the -- and the prior
7 window has a -- a provision that allows a filer to --
8 if it's the trustee or if it's a debtor, to -- to be
9 exempt from paying a filing fee, correct?

10 A. That is correct.

11 Q. But other users are required to pay the
12 fee, are they not?

13 A. Correct.

14 Q. Okay. And so if -- if, in fact, the
15 filing wasn't complete, it's my understanding from
16 your testimony that the window to make payment would
17 not arise.

18 A. If you don't get to the notice of
19 electronic filing, then you have not completed the
20 transaction. And if you don't get to that, you will
21 not get to the Pay.gov screen.

22 Q. Okay. And in this particular case the --
23 the Pay.gov screen arose the next morning at our
24 office. Do you have -- and then that -- I think you
25 heard the testimony from Janene that my paralegal

1 coordinated with her once that arose and made that
2 payment?

3 A. Yes.

4 Q. Do you have an understanding if, in fact,
5 there -- there wasn't a problem with the filing, why
6 the Pay.gov window would not have opened up until the
7 following day?

8 A. I have no idea why that might happen. It
9 seems unlikely.

10 Q. It would be abnormal, wouldn't it?

11 A. That is correct.

12 Q. Now, Gary, let me show you what's been
13 marked as Exhibit 14. It is entitled Transaction
14 Log. You're familiar with that --

15 A. Yes.

16 Q. -- report, are you not?

17 A. I am.

18 Q. And can you just real quickly tell us what
19 that report shows?

20 A. I think it's been described. It's just
21 basically a ID of all the transactions that occur in
22 the -- in the filing system.

23 Q. And then this other Exhibit 11 that's
24 entitled Case Report, has it been accurately
25 described?

1 A. It's a report, yes.

2 Q. Okay. And I believe when -- when we met
3 and I discussed this with you and Mr. Jones that --
4 do you recall that you both indicated that we had a
5 discussion concerning this box? And let the record
6 reflect that counsel is referring to Exhibit 11, the
7 center column -- row -- the sixth row --

8 A. No.

9 Q. Oh, I'm sorry. The center row, sixth
10 column -- matrix Algebra was never my thing. So do
11 you recall the discussion we had regarding the dates
12 in that box?

13 A. Yes.

14 Q. And do you recall that both you and -- and
15 Mr. Jones indicated that you had never -- had never
16 before seen an entry like that?

17 A. I don't think I said that. I think I said
18 it's unusual to see that, and I wanted to find out
19 why that was.

20 And then I remembered and -- before we
21 even looked into the system -- that I said that
22 oftentimes when a filing is -- is started before
23 midnight but completed after midnight there can be
24 anomalies like that showing up in the system. And,
25 in fact, that's, in fact, what happened. And, in

1 fact, there are several modification requests either
2 been completed or pending with regards to the filing
3 system that reflect this same kind of issue. So this
4 is not unusual.

5 Q. Okay. So based on that -- that entry,
6 then, you would indicate that yes, there was activity
7 on April 22nd?

8 A. Sure. Absolutely. And the way the system
9 works, it creates a context file. And that context
10 file captures a lot of information when you first
11 start the transaction. And then when you finish the
12 transaction, it takes some of that information and
13 completes and fills in the rest of the database with
14 the information it needs.

15 And, obviously, this is one of those
16 situations where the information was incorrect, and a
17 modification request should probably be written up,
18 but chances are this is such a minor thing that --
19 many of the modification requests with regards to
20 this type of issue have been around since 2008, 2011,
21 have never been accomplished, because there are much
22 more important modifications that the administrative
23 office and the courts, in general, want to get done
24 first.

25 Q. I see. All right.

1 THE COURT: I might be a little confused
2 on the testimony. I thought the testimony that you
3 just gave, Mr. Gfeller, suggests that you know -- or
4 can find out when a user enters the system and
5 completes a filing.

6 THE WITNESS: I can tell when -- based on
7 this, I know that the -- that the context file
8 creates and -- and fills in data into the database.

9 There is not a physical record -- I mean,
10 we do have a record of -- in the database. There's a
11 field -- or a table called Users which identifies
12 when you log in -- when the last time you log in so
13 we know when people log into the system. So, from
14 that perspective, we know certain things about that.
15 That's not from the log files, which what we were
16 talk about.

17 THE COURT: Okay. So not from the files
18 that Mr. Call was asking you about, you can't
19 determine when a user is on and off the system, but
20 you do have that information available in the
21 database?

22 THE WITNESS: Yes, there is a table in the
23 database that can identify that information.

24 THE COURT: Okay.

25 Q. (BY MR. CALL) Okay. Okay. And if -- to

1 just further clarify the testimony that you gave, my
2 understanding is, is that -- and I think you said it
3 pretty well and -- and pretty specifically, but there
4 was clearly activity on the -- on the system -- the
5 file system.

6 A. Sure, and -- and we've already established
7 that you were logged into the system shortly after
8 11:39. In fact, we know the exact time was something
9 -- 11:42 or something like that. So we know you
10 logged onto the system. We know you restarted the
11 transaction, so...

12 Q. Okay. Okay. Thank you. So can you look
13 over this Exhibit 14?

14 A. Yes.

15 Q. Okay. And -- so just going to the far
16 right there, just to hurry this along --

17 A. Sure.

18 Q. -- it's -- again, you've heard it said.
19 It says this is a temporary log-entry to handle
20 timing issues with docketing the same event many
21 times.

22 Is that -- is that kind of what you've
23 previously testified to, that you're talking about
24 that there are -- or let me not put words in your
25 mouth. Do you want to explain --

1 A. Sure. Actually, I --

2 Q. Let me first interrupt you and ask, have
3 you seen that entry before?

4 A. Yes, I have.

5 Q. Okay.

6 A. So -- and I actually did some testing to
7 make sure that I could replicate that problem.

8 Q. Okay.

9 A. And the way you replicate that problem is
10 that at the end of the transaction, when you get to
11 the notice of electronic filing screen -- and in the
12 case of an outside attorney you also see the Pay.gov
13 screen. If you go and hit the Back button, you go
14 right back to the original screen that gives you the
15 information about ready to file and -- and accept
16 that -- submit that transmission.

17 If you do that, and you do that a couple
18 of times, you get exactly that message. And I
19 replicated -- I created three new cases this morning
20 in our training database. I replicated that exact
21 same process, and in every case I created that entry
22 in the log entry.

23 Q. So that entry reflects multiple efforts to
24 complete.

25 A. And that seems to indicate -- and that

1 seems in con -- in -- in reliance to what you had
2 actually talked about when we first met a couple
3 weeks ago, that you had kept going back and forth and
4 back and forth, and it makes sense. And, in fact, I
5 had assumed that that's what was the issue, I just
6 hadn't validated it, and I validated it this morning.

7 Q. Okay.

8 A. And so, yes, it's pretty clear it's --
9 it's -- that's the reason why.

10 Q. Okay. Just -- last question. Do you know
11 when the adversary proceeding opens?

12 A. Yes.

13 Q. Does it open simultaneously with the
14 filing of the Complaint?

15 A. So it is the filing of the Complaint that
16 creates the adversary proceeding. So it is when the
17 adver -- the Complaint is filed, date and time -- and
18 it's the date and time on the electronic -- and the
19 notice of electronic filing for the Complaint that
20 determines when the adversary is actually opened.

21 Q. Okay. So on the one window that had Pay
22 Next, would the adversary typically (counsel stepped
23 away from mic.)

24 A. Absolutely not. It has to go through
25 several more screens before you get to the notice of

1 electronic filing. When you see the notice of
2 electronic filing -- and as an attorney, typically,
3 the Pay.gov screen -- that's when you know the
4 transaction has been accepted by the court and is
5 truly filed with the court.

6 Q. Okay. So simultaneous -- complaint
7 adversary happens simultaneously -- or it opens --
8 the adversary opens simultaneously with the
9 Complaint, correct?

10 A. Sure. I mean, the idea is you can't --
11 the case gets created first, but it's in the same
12 exact instance that the Complaint -- first entry gets
13 created as well. You have to have the case, the
14 adversary proceeding, before you can put the first
15 entry in. That's the way the database works.

16 Q. And then isn't it accurate that it also
17 generates a summons and a notice of -- of the
18 issuance of the summons?

19 A. Yes. The issuance of the summons is an
20 automatic process that happens at the end of the --
21 at the end of the docketing of the Complaint. So
22 once the Complaint's filed, the system automatically
23 generates a summons.

24 Q. Okay. So going back to that exhibit...

25 A. Yes.

1 Q. Sorry. Let me just, for the record,
2 indicate, Exhibit 14 -- so it -- it indicates --
3 it -- there's the log entry that we were referring to
4 on row three, and then it indicates that there was
5 a -- an open new adversary case notice and then also
6 a summons that was generated, correct?

7 A. Correct.

8 MR. CALL: Okay. Okay. Gary, thank
9 you --

10 THE WITNESS: You're welcome.

11 MR. CALL: -- for your testimony.

12 CROSS-EXAMINATION

13 BY MR. MORRISON:

14 Q. Okay. I think you testified that we can
15 tell precisely when Mr. Call logged into the system
16 on April 22nd, 2019, to start the process of filing
17 the Adversary Complaint in this case.

18 Do you have that information available to
19 you and -- just with what you brought with you to
20 court today?

21 A. I did not bring that with me, but I
22 remember I was looking at that information at our
23 previous meeting.

24 Q. Okay. Do you have information on whether
25 Mr. Call logged out during this filing and then

1 logged back in?

2 A. I do not have that information, but we
3 can -- we could check that. But I don't believe that
4 when we checked that that happened.

5 Q. Okay. How hard would it be -- that be to
6 get that information for us?

7 A. We would have to do a search of the
8 database, just a query of the database.

9 Q. If we were to take a short recess, how
10 much time would you need to get that?

11 A. Five minutes.

12 MR. MORRISON: Is that okay, your Honor?

13 THE COURT: I thought I was going to get
14 that. Based on the discussions we had at our
15 pretrial hearings, I thought that was going to be
16 information. So I'll take a brief recess.

17 MR. MORRISON: Thank you.

18 THE CLERK: All arise.

19 (Recess taken.)

20 THE CLERK: Court resumes in session.
21 Please be seated.

22 THE COURT: All right.

23 MR. MORRISON: Okay to proceed?

24 THE COURT: Yes.

25 MR. MORRISON: All right. Thank you, your

1 Honor.

2 We have stipulated that Exhibits 16 and 17
3 from yesterday may be received into evidence.

4 And then also we have identified with
5 Mr. Gfeller an exhibit that we've marked as
6 Exhibit 18 that we have all -- counsel have also
7 stipulated may be received into evidence, and we'll
8 be talking about that exhibit in just a moment.

9 THE COURT: Well, why don't we maybe lay
10 some foundation just for my benefit.

11 MR. MORRISON: Sure.

12 THE COURT: Maybe Mr. Gfeller could
13 explain how this is generated, what it was generated
14 from and what it shows.

15 Q. (BY MR. MORRISON) Would you be able to do
16 that for us?

17 A. Yes, I can.

18 So whenever somebody logs into the system,
19 it gets logged into the log-in table of our database.
20 And there are three fields, and specifically that we
21 were looking at is the date of when the log-in
22 occurs, the IP address of machine and the person's ID
23 record. So that's -- in this case 1544 is for the ID
24 associated to attorney Steven Call.

25 Q. Thank you.

1 THE COURT: Thank you.

2 THE WITNESS: And -- and the other thing
3 that this identifies is only when somebody logs in.
4 It does not identify when somebody logs out. So if
5 somebody does log out, the next time they log in will
6 be identified in the database and, therefore, can be
7 extracted in a report like this.

8 Q. (BY MR. MORRISON) So, in other words, we
9 can tell if somebody's logged out and logged --
10 logged back in because there would be multiple
11 entries indicating that?

12 A. Correct.

13 Q. All right. Very good. And you -- I
14 believe you testified that the PRID, which shows up
15 on Exhibit 18, the PRID is the personal
16 identification number?

17 A. Yeah, the person ID, yes.

18 Q. And the identification number on
19 Exhibit 18 is 1544, which you have been able to link
20 to Mr. Call?

21 A. Correct.

22 Q. Okay. So does Exhibit 18 establish when
23 Mr. Call logged into the electronic filing service on
24 April 22nd of 2019?

25 A. Yes. It's at 23:40:45.

1 Q. And another way to say that time would be
2 11:40:45 seconds on the clock?

3 A. Correct.

4 Q. P.m.?

5 A. P.m., yeah. 11:00 p.m.

6 Q. Okay. Thank you.

7 And we don't see that he logged back in
8 until when, according to Exhibit 18?

9 A. Until the next morning around 8:57 a.m.

10 Q. So by that we can tell that his log-in on
11 April 22nd was continuous until he logged out
12 until we see the next entry?

13 A. Correct. I mean, we know, based upon the
14 transaction log, that he was on at least until 16
15 minutes and 48 seconds past midnight. How long he
16 stayed on after that we don't have a record.

17 Q. Okay. And that reference to the
18 16 minutes past midnight was the reference to the
19 filing of the Adversary Complaint in this case,
20 correct?

21 A. Right, on Exhibit 14.

22 Q. Okay. Thank you.

23 THE COURT: All right. So just to make
24 sure I understand, Mr. Gfeller; we don't know -- we
25 know Mr. Call logged in April 22nd at 11:40:45 p.m.